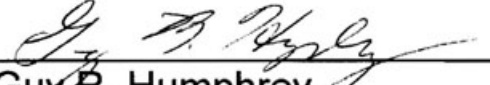


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: November 21, 2008



Guy R. Humphrey
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

In re: STEPHANIE K. OBERLY,

Debtor

Case No. 04-37911

Judge Humphrey
Chapter 7

**Decision (1) Sustaining the Debtor's Objection and
Disallowing the Claim of Ted Oberly and
(2) Canceling Hearing Scheduled For November 25, 2008**

Background

On January 4, 2005, Ted Oberly filed a secured proof of claim for \$21,623.11 (Proof of Claim 10-1). The Debtor filed an objection to the claim on April 27, 2008 (Doc. 38). On May 5, 2008, Ted Oberly filed a response indicating that he was the Debtor's former father in law and provided goods and services "pursuant to a mutual endeavor and contract." (Doc. 43).

On May 6, 2008, Ted Oberly filed an amended proof of claim (10-2), seeking the same sum certain of \$21,623.11, but filing the claim as a non-priority unsecured claim for “material, money & services for improvement of real estate.”

The Debtor again objected (Doc. 52) on June 3, 2008. The Debtor argued the claim was insufficiently documented and further that the domestic relations court had determined in the Debtor’s divorce that the Debtor owed Ted Oberly nothing. *Id.* In a June 17, 2008 response (Doc. 66), Ted Oberly indicated he had “sufficient and credible evidence” to support the claim.

On July 15, 2008, the court entered an order (Doc. 72) setting this contested matter for hearing. In the second paragraph of that order, the court stated that “[c]ounsel should pay particular attention to Section IV of this Order. Although the court discussed with counsel, during the status conference, the possibility of pre-hearing memoranda being optional, the court has determined pre-hearing memoranda are necessary to the efficient adjudication of the Contested Matter and therefore shall be mandatory.” (bold in original).

Section IV of the order (Doc. 72) stated:

The parties shall file the following pre-hearing memoranda of law **not later than November 13, 2008:**

1) The Creditor shall file a pre-hearing memorandum that identifies the legal theory (e.g. contracts, quantum meruit, etc.) upon which the Creditor claims money is owed to him by the Debtor and upon which the Creditor intends to rely at the hearing scheduled through this order, including setting forth citations of legal authority supporting any such legal theory.

2) To the extent that the Debtor is asserting that the Creditor’s claim was resolved through divorce proceedings between the Debtor and the Creditor’s son, the Debtor shall file a pre-hearing memorandum setting forth

any *res judicata* or claim preclusion issues and the applicable legal arguments, including citations of legal authority supporting such arguments.

To the extent that the parties will be relying on documentary evidence to support their claims or arguments, those documents shall be properly presented to the court either: a) pursuant to Federal Rule of Bankruptcy Procedure 7056 incorporating Federal Rule of Civil Procedure 56; or b) in accordance with the requirements of Section II of this Order.

(bold and underlining in original).

On November 13, 2008, the Debtor filed the mandatory prehearing memorandum (Doc. 93). However, Ted Oberly failed to file the mandatory prehearing memorandum by November 13, 2008. After reviewing the docket, the court initiated a courtesy call to both counsel for the Debtor and for Ted Oberly indicating the court intended to fix another date for the filing of the mandatory prehearing memorandum by Ted Oberly. The court notes, although it is readily evident from the November 13, 2008 order, the prehearing memorandum was intended to provide the legal theory supporting the claim of Ted Oberly.

On November 19, 2008, another court order was entered (Doc. 97) providing Ted Oberly until November 20, 2008 at 4 p.m. to file the prehearing memorandum. The order stated that **“[t]he failure to file this mandatory prehearing memorandum may result in the Debtors’ objection being sustained and the claim of Ted Oberly being denied, without further hearing, by separate order of the court.”** (bold and underlining in original).

The court notes that both orders (Docs. 72, 97) were received by counsel for Ted Oberly at 2 separate email addresses designated by counsel for Ted Oberly for receipt of court notices.

Upon a review of the docket, Ted Oberly has failed to file the prehearing memorandum nor requested additional time to file the memorandum.

Analysis

Ted Oberly, through his counsel, has failed to comply with two separate orders of this court. Accordingly, the court, consistent with its prior order (Doc. 97), **disallows the proof of claim of Ted Oberly**. The failure to comply with two court orders is sufficient reason to deny the proof of claim of Ted Oberly. See generally *Chambers v. Nasco, Inc.*, 501 U.S. 32, 44-45 (1991) (in appropriate circumstances, dismissal of a lawsuit is within the court's inherent authority to sanction).

Further, the court notes that the magistrate presiding over the divorce of the Debtor determined, in his June 7, 2005 decision and order that Ted Oberly was not entitled to be paid for any work on the Debtor's former marital residence. (Debtor Exhibit 1, p. 2). Further, the Judge in that case, in his June 5, 2006 Entry on Objections and Order to File Final Decree (Debtor Exhibit 2, p. 6) determined that the Debtor's ex-husband, Tracy Oberly, was responsible for the loan from Ted Oberly concerning the down payment on the former martial real estate.

Based on the record before the court, the court determines that Ted Oberly does not have an allowable claim against the bankruptcy estate of the Debtor. Bankruptcy Code § 502(b)(1) provides that a bankruptcy court should disallow a claim if "such claim is unenforceable against the debtor and property of the debtor." In this case, the domestic relations court found the debt to be unenforceable against the debtor and her property and this court is precluded from re-litigating those issues.

Further, the court finds, in the particular circumstances of this contested matter, that the parties have been provided with sufficient notice and hearing within the meaning of 11 U.S.C. § 502(b). 11 U.S.C. § 102(1). The court provided the parties with clear, repeated and conspicuous notice of the opportunity to further explain their legal positions through the filing of mandatory legal memoranda and documentary evidence. Claimant Ted Oberly failed to avail himself of that opportunity other than to belatedly file a skeletal itemization of the amounts included in his claim (Doc. 96), the total amount of which was inconsistent with his amended proof of claim.

Conclusion

The Debtor's claim objection (Doc. 52) is **sustained** and the amended proof of Claim of Ted Oberly (10-2) is **disallowed**. The hearing scheduled for November 25, 2008 on this contested matter (Doc. 85) is hereby **cancelled**. The court shall simultaneously issue an order consistent with this decision.

c:

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Wilfred L. Potter, 234 N. Limestone St., Springfield, Ohio 45503 (Counsel for Ted Oberly)

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